

of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey [41 U.S.C. 35 et seq.] and Bacon-Davis<sup>1</sup> Acts and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter shall apply to the Walsh-Healey Act and the Bacon-Davis Act.<sup>1</sup>

(b) It is declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils (1) to relieve and

protect interstate commerce from practices which burden and obstruct it; (2) to protect the right of collective bargaining; and (3) to define and limit the jurisdiction of the courts.

(May 14, 1947, ch. 52, § 1, 61 Stat. 84.)

#### REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

This chapter, referred to in subsec. (a), was in the original "this Act", meaning act May 14, 1947, ch. 52, 61 Stat. 84, as amended, known as the Portal-to-Portal Act of 1947, which enacted this chapter and amended section 216 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

#### SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-188, [title II], §2101, Aug. 20, 1996, 110 Stat. 1928, provided that: "This section and sections 2102 [amending section 254 of this title] and 2103 [enacting provisions set out as a note under section 254 of this title] may be cited as the 'Employee Commuting Flexibility Act of 1996'."

#### SHORT TITLE

Section 15 of act May 14, 1947, provided that: "This Act [enacting this chapter and amending section 216 of this title] may be cited as the 'Portal-to-Portal Act of 1947'."

#### SEPARABILITY

Section 14 of act May 14, 1947, provided: "If any provision of this Act [see Short Title note above] or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

### § 252. Relief from certain existing claims under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act

#### (a) Liability of employer

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.] the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act<sup>1</sup> (in any action or proceeding commenced prior to or on or after May 14, 1947), on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any activity of an employee engaged in prior to May 14, 1947, except an activity which was compensable by either—

(1) an express provision of a written or non-written contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee was employed, cov-

<sup>1</sup> See References in Text note below.

<sup>1</sup> See References in Text note below.

ering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

**(b) Compensable activity**

For the purposes of subsection (a) of this section, an activity shall be considered as compensable under such contract provision or such custom or practice only when it was engaged in during the portion of the day with respect to which it was so made compensable.

**(c) Time of employment**

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], of the Walsh-Healey Act [41 U.S.C. 35 et seq.], or of the Bacon-Davis Act,<sup>1</sup> in determining the time for which an employer employed an employee there shall be counted all that time, but only that time, during which the employee engaged in activities which were compensable within the meaning of subsections (a) and (b) of this section.

**(d) Jurisdiction**

No court of the United States, of any State, Territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any action or proceeding, whether instituted prior to or on or after May 14, 1947, to enforce liability or impose punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], under the Walsh-Healey Act [41 U.S.C. 35 et seq.], or under the Bacon-Davis Act,<sup>1</sup> to the extent that such action or proceeding seeks to enforce any liability or impose any punishment with respect to an activity which was not compensable under subsections (a) and (b) of this section.

**(e) Assignment of actions**

No cause of action based on unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act,<sup>1</sup> which accrued prior to May 14, 1947, or any interest in such cause of action, shall hereafter be assignable, in whole or in part, to the extent that such cause of action is based on an activity which was not compensable within the meaning of subsections (a) and (b) of this section.

(May 14, 1947, ch. 52, § 2, 61 Stat. 85.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a), (c) to (e), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsecs. (a), (c) to (e), are defined for purposes of this chapter in section 262 of this title.

**§ 253. Compromise and waiver**

**(a) Compromise of certain existing claims under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, or the Bacon-Davis Act; limitations**

Any cause of action under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act [41 U.S.C. 35 et seq.], or the Bacon-Davis Act,<sup>1</sup> which accrued prior to May 14, 1947, or any action (whether instituted prior to or on or after May 14, 1947) to enforce such a cause of action, may hereafter be compromised in whole or in part, if there exists a bona fide dispute as to the amount payable by the employer to his employee; except that no such action or cause of action may be so compromised to the extent that such compromise is based on an hourly wage rate less than the minimum required under such Act, or on a payment for overtime at a rate less than one and one-half times such minimum hourly wage rate.

**(b) Waiver of liquidated damages under Fair Labor Standards Act of 1938**

Any employee may hereafter waive his right under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], to liquidated damages, in whole or in part, with respect to activities engaged in prior to May 14, 1947.

**(c) Satisfaction**

Any such compromise or waiver, in the absence of fraud or duress, shall, according to the terms thereof, be a complete satisfaction of such cause of action and a complete bar to any action based on such cause of action.

**(d) Retroactive effect of section**

The provisions of this section shall also be applicable to any compromise or waiver heretofore so made or given.

**(e) "Compromise" defined**

As used in this section, the term "compromise" includes "adjustment", "settlement", and "release".

(May 14, 1947, ch. 52, § 3, 61 Stat. 86.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (b), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

**§ 254. Relief from liability and punishment under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act for failure to pay minimum wage or overtime compensation**

**(a) Activities not compensable**

Except as provided in subsection (b) of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201

<sup>1</sup> See References in Text note below.